IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.12212 OF 2006
IN
NOTICE OF MOTION NO.492 OF 2005
IN
SUIT NO.670 OF 2005
WITH
CIVIL APPLICATION ST.NO.12213 OF 2006

M/s.M.M.Corporation. ..Appellants.

V/s.

The Juhu Vile Parle Development
Co-operative Housing Association
Ltd. ..Respondents.

Mr. S.P.Chinoy with Mr.Bharat Choudhary i/b N.G.Bhatt for appellants.

Mr.Janak Dwarkadas, Sr.Advocate with Mr.Gaurav Joshi & Nishant Thakkar i/b. Manohar Thakkar for respondents.

CORAM: A.M.KHANWILKAR,J
DATE : JUNE 5, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record.

2. I find no reason to interfere with the well reasoned and considered Judgment of the Court below. The Court below has, in my opinion, rightly come to the conclusion that no prima facie case has been made out by the plaintiffs.

3. The counsel for the appellants however,

contends that having regard to the finding recorded in paragraph-32 of the Judgment, the conclusion is inevitable that the decision dated 20th October, 2004 as communicated by the defendants to the appellants is without authority and is in breach of Section 200 of the Indian Contract Act. The argument seems to be attractive, however, clearly overlooks the finding of fact recorded by the Court below. The Court below has not accepted the case made out by the plaintiffs in paragraph-18 of the plaint that the plaintiffs were called by the Secretary of the Association, to be informed that the committee has accepted the plaintiffs' bid and has awarded the contract to the plaintiffs. The Court below on analysing the materials on record has found as of fact that, the said case made out in paragraph 18 of the plaint is afterthought. The Court below has rightly adverted to the circumstance that on 23rd October, 2004, the plaintiffs sent letter which makes no reference to the deliberation which allegedly took place on 17th October, 2004 informing the appellants that the bid is accepted and the contract is awarded. This is a possible view. The fact remains that there is no material to indicate acceptance of the tender submitted by the appellants by any committee or association as such. On the other hand, the

Association in its General Meeting held on 30th October, 2004 resolved in the following terms.

> "BE AND HEREBY RESOLVED that the actions taken by the Office Bearers to reject the offers of all the three bidders for the development of Vishnuprasad Desai Bhavan as per the suggestion given by the Development Sub-Committee in its meeting held on Tuesday, 12th October, 2004, in view of the opinion given by Solicitors Shri Parimal Shroff and Shri Nishant Thakkar to scrap all the offers to avoid complications and litigation and to return the securities given by the respective bidders returned forthwith are ratified."

This decision of the Association is in conformity with the authority of the Association to reject the tenders without assigning any reason in terms of the clause occuring in the tender notice.

4. Counsel for the appellants however, argues that this ex post facto ratification is impermissible in law. However, this submission overlooks that the abovesaid resolution is in two parts. The first part refers to the suggestion of the Development Sub-Committee in its meeting held on 12th October, 2004 and also to the opinion given by the Solicitors to scrap all the offers to avoid complications and litigation. Thus understood, the first part of the resolution is one of accepting the suggestion given by the sub-committee and the opinion of the

Solicitors to scrap all the offers to avoid complications and litigation. The association has accordingly taken informed decision to scrap all the offers to avoid complications and litigation and to return the securities given by the respective bidders. The expression employed in the said resolution "are ratified" will have to be understood in that context. Moreover, as is found by the trial Court and which finding is a possible view that there is no material to substantiate the fact that the appellants tender has been accepted or approved by any committee or Association as such- it follows that there is no concluded contract and the Association was therefore within its power to scrap all the three offers and cause to return the securities to the respective bidders. In any case, as has been rightly found by the Trial Court the appellants have failed to challenge the decision of the Sub-committee dated 12th October, 2004 or the decision reached by the General Body in its resolution dated 30th October, 2004. In absence of challenge to the said decisions, the argument that the communication dated 20th October, 2004 is in breach of section 200 of the Indian Contract Act is of no avail to the appellants. Accordingly, the view taken by the trial Court on the issue that the appellants have failed to make out any

prima facie case does not deserve any interference. It is not a case of perverse view taken by the Trial court which requires to be interfered with by this court in Appeal from Order. Thus, understood, it is not a case for admission. Hence appeal as well as civil application dismissed.

5. At this stage, counsel for the appellants submits that interim protection was operating in favour of the appellants in terms of order dated 4th April, 2006, which has been extended till today. That interim protection be continued for a period of four weeks to facilitate the appellants to take up the matter in appeal, if so advised. This request is opposed by the respondents. According to the respondents there was no interim order issued by the court; But statement of the respondents to the effect that status quo will be maintained has been recorded-which statement the respondents are not willing to continue. In my opinion, as the request made on behalf of the appellants to facilitate them to approach the Apex Court being reasonable one, Parties are directed to maintain status quo as of today, in terms of statement which was made by the respondents on the earlier occasion, for a period of four weeks from today.